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ORGANIZATION OF THE WORK OF THE SESSION: ASSISTANCE TO GUATEMALA IN THE FIELD OF HUMAN RIGHTS

Report by the independent expert, Mr. Christian Tomuschat, on the situation of human rights in Guatemala, prepared in accordance with paragraph 14 of Commission resolution 1990/80

Addendum

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Introduction

1. This addendum has been prepared to provide the Commission on Human Rights with the most up-to-date information possible on the human rights situation in Guatemala. It will be recalled that the Expert's main report concerned events that took place in 1990 up to the first half of December (see E/CN.4/1991/5, para. 16). This document concerns the most significant events that occurred between December 1990 and 9 February 1991.

2. This period saw the culmination of the important electoral process initiated by Decree No. 1-90 issued by the Supreme Electoral Council, on 8 June 1990, which gave notice of elections for the posts of President and Vice-President of the Republic and deputies to the Congress and the Central American Parliament, and local elections for members of municipal corporations. On 6 January 1991 the second round of the presidential election was held, leading to the victory of Mr. Jorge Antonio Serrano Elías, of the Movimiento de Acción Solidaria (MAS), with 68 per cent of the votes. President Serrano took office on 14 January 1991 and formed a Government, while at the same time the new legislature in the National Congress and the new municipal corporations were constituted.

3. The new Government invited the Expert to visit Guatemala in connection with his mandate, and he immediately took up the invitation, as it would allow him to meet the new authorities and to gather up-to-date information on the evolution of the situation over the previous two months.

4. The Expert visited Guatemala for the second time from 3 to 9 February 1991, accompanied by two officials from the Centre for Human Rights. With the full co-operation of the new Government, he was able to hold working meetings with the President of the Republic, the Minister for Foreign Affairs, the Minister of National Defence, the Deputy Minister of the Interior and the Director-General of the National Police. He also had talks with the President of the Supreme Court of Justice and of the Judicial Branch, as well as with the President of the National Congress and the members of the Human Rights and Indigenous Communities Commissions of the Congress. The Expert also had a meeting with the Procurator for Human Rights and his assistants, with the Chairman and members of the National Reconciliation Commission and with the Metropolitan Archbishop of Guatemala.

5. The Expert met representatives of the following Guatemalan non-governmental organizations: Association for Social Research and Studies (ASIES); Comunidades de Población en Resistencia de la Sierra (CPR); Cellulose Workers Union (SINTRECEL); Centre for Human Rights Research, Study and Promotion (CIEPRODH); the Ethnic Communities Council "Runujel Junam" (CERJ); the Confederation of Members of Religious Orders of Guatemala (CONFREGUA); the Mutual Support Group (GAM); the Association for the Advancement of the Social Sciences in Guatemala (AVANCSO); the Human Rights Office of the Archbishopric of Guatemala; the Association of University Students (AEU); the Peasant Unity Committee (CUC); the National Council of Displaced Persons of Guatemala (CONDEG); the non-governmental Human Rights Commission of Guatemala; the Education Workers Union; the Trade Union of Guatemalan Workers (UNSITRAGUA); the National Co-ordinating Committee of Guatemalan Widows (CONAVIGUA); and the Human Rights Commission of National Dialogue.

6. The Expert also met the Resident Representative of the United Nations Development Programme (UNDP) whom he thanked for the support and facilities provided by the UNDP Office for the purposes of his mission; the representatives of UNHCR and UNICEF; the delegate of the International Committee of the Red Cross (ICRC); the United Nations Advisers Mr. Augusto Willemsen Diaz (Indigenous Matters) and Marco Antonio Sagastume Gemmell (Human Rights Teaching) and various ambassadors and diplomatic representatives accredited in Guatemala.

7. The Expert also travelled to Santiago Atitlán (Sololá Department), where he was received at the town hall by the mayor, the town council and the security and development committee. He interviewed witnesses and wounded survivors of the massacre which took place during the night of 1 to 2 December 1990 and enquired as to the most pressing needs of the community. He then visited the local police sub-station, the premises of the parish church and the place where the military camp had been located until its recent evacuation.

8. It should be mentioned that the Expert had frequent informal contacts with representatives of the various mass media and gave interviews to the magazine Cronica and to the Mexican news agency ECO.

9. The Expert also received in his offices individuals who had expressed the desire to meet him in order to lodge complaints and charges relating to serious violations of their rights or those of their relatives.

10. Lastly, the Expert decided to accompany the Procurator for Human Rights and a group of representatives of the international community on a field trip to the north of Quiché Department, in order to establish direct contact with some of the "Comunidades de Población en Resistencia de la Sierra". Unfortunately, unfavourable weather compelled him to cancel his trip.

I. MAIN DEVELOPMENTS BETWEEN DECEMBER 1990 AND FEBRUARY 1991

A. The new Government

11. The Government of Presidente Serrano is composed of the following politicians representing different shades of political opinion: Minister for Foreign Affairs, Alvaro Arzú Irigoyen (political affiliation: Plan de Avanzada Nacional (PAN)); Minister of National Defence, Brigadier General Luís E. Mendoza García (unaffiliated); Minister of Agriculture, Adolfo J. Boppel Carrera (political affiliation: Movimiento de Acción Solidaria (MAS)); Minister for Special Affairs, Antulio Castillo Barajas, (political affiliation: MAS); Minister of Communications, Transport and Public Works; Alvaro E. Heredia Silva (political affiliation: PAN); Minister of Urban and Rural Development; Manuel A. Benfeldt Alejos (political affiliation: MAS); Minister of the Economy, Richard Aitkenhead Castillo (political affiliation: MAS): Minister of Education, Maria Luisa Beltranena (political affiliation: MAS); Minister of Energy and Mines, Carlos L. Hurtarte (political affiliation: MAS); Minister of Public Finance, Irma R. Zelaya (political affiliation: MAS); Minister of the Interior, Colonel Ricardo Méndez Ruiz (unaffiliated); Minister of Public Health and Social Welfare, Miguel A. Montepeque (political affiliation: MAS); Minister of Labour and Social Security, Mario R. Solórzano (political affiliation: Partido Socialista Democrático (PS)).

12. During an interview with the Expert lasting almost four hours, the President of Guatemala, Jorge Antonio Serrano Elías, referred to his inaugural address, delivered on 14 January 1991, in which he had spoken of his commitment and political will to spare no effort to restore human rights in Guatemala fully. In his address the President had indicated that there was a tendency in Guatemala to deny or minimize the facts "and even to go so far as to conceal them, so that government inaction, and what was far worse, inaction on the part of the judical system, became obvious". The President had stressed the need to bring about a change in attitude, to "punish the guilty, regardless of their rank, authority or wealth" and to establish equal justice for all by reform of the law and modernization of the indictment and trial systems. He informed the Expert of the measures taken against seven military commissioners who had been committed for trial for having attempted to conscript people by force. He also mentioned the dismissal of an army officer who had wounded several persons while drunk and who had been brought before the civil courts.

13. The President stressed that both he and his cabinet were committed to pursuing the process of dialogue to the end. He said that one of the Government's main objectives was to achieve complete peace and reconciliation and that he would leave no stone unturned in order to do so.

14. The President informed the Expert that, in his capacity as Commander-in-Chief of the army, and in order to establish the necessary conditions for efforts to restore, peace, he had made major changes to the military high command. Thus, he had appointed Brigadier Generals Luís E. Mendoza García and Raúl Molina Bedoya Minister of Defence and Chief of the General Staff respectively in place of Major-Generals Juan L. Bolaños Chávez (former Minister of Defence) and Roberto E. Mata Gálvez (former Chief of the General Staff), who had retired several months early.

15. It should be mentioned that during the Expert's interview with the Minister of Defence, the latter informed him that the army obeyed the Constitution and was under the orders of the Government. He also stated that at the present time the army could not be indifferent to Guatemalans' longing for peace. He said that the army would do its utmost to achieve peace and that he personally, as Minister of Defence, would support any measure taken by the Government to that end.

16. President Serrano also drew the Expert's attention to a series of measures he had taken during his first two weeks in office in order to support Guatemalan institutions responsible for the administration of justice. They included visits to the Procurator for Human Rights, to the Constitutional Court and to the President of the Supreme Court of Justice. In addition, by government decision No. 68-91 of 4 February 1991, the Government had established the Ad Hoc Committee for Aid to Returnees (CEAR) as a department of the Office of the President of the Republic. The reorganization had been carried out so that decisions could be taken at the highest executive level to solve, above all, the problem of the return to Guatemala of Guatemalan refugees from abroad and to provide assistance to persons displaced from their place of origin or residence inside the country. CEAR is composed of the Vice-President of the Republic, who chairs the Committee, and the Ministers for Foreign Affairs, National Defence, the Interior and Urban and Rural Development, together with the Secretary-General of Economic Planning and the Ad Hoc Adviser on International Co-operation to the Office of the President of the Republic.

17. With regard to Guatemala's accession to the International Covenant on Civil and Political Rights and its Optional Protocol, both President Serrano and the Minister for Foreign Affairs assured the Expert of the Government's political will to ratify both international instruments. Professor Gros Espiell, the former Expert on Guatemala, had already mentioned to the Government of President Cerezo the need to ratify those instruments on a number of occasions, but ratification had not yet taken place. According to the President of the Congress, Ana Catarina Soberanis, the instruments in question were currently before the Legislative Commission of the Congress of the Republic. However, it would appear that no steps have so far been initiated in respect of ratification.

18. During his visit to Guatemala, the Expert received unofficial information on a number of government initiatives for the establishment of a human rights office, department or commission in Guatemala. The Expert would like to point out that it would be of the greatest value to the new Government to establish a body responsible for drawing up human rights policy both at the national and international level and for co-ordinating measures taken by the various national institutions with regard to the promotion and protection of human rights. Such an initiative, which would be in line with the resolutions adopted by the United Nations, could be the subject of technical co-operation between the Government of Guatemala and the United Nations.

B. National dialogue

19. During his conversations with President Serrano Elías and the Minister of Defence, General Mendoza García, the Expert was able to raise the issue of the prospects for national dialogue during the coming months. He was also able to meet the President of the National Commission for Reconciliation, Monsignor Quezada Toruño, as well as other members or deputy members of the Commission: Monsignor Gerardi Conedera, Colonel Gordillo Martínez and Mrs. Zarco. All the meetings took place in a spirit of complete openness and frankness.

20. President Serrano Elías already stated in his inaugural address to the nation of 14 January 1991 that he was firmly committed to continuing the talks with the Unidad Revolucionaria Nacional Guatemalteca (URNG), which had been initiated on the basis of the Oslo Agreement of 30 March 1990 (see document E/CN.4/1991/5, paras. 51 ff), with a view to integrating the guerrilla forces within the political and democratic structures of the country. Contrary to the terminological usage which formerly drew a sharp distinction between the Government and the armed forces, it now seems to be clearly established that the armed forces neither enjoy nor claim to enjoy an autonomous power of decision as regards the attitude towards the URNG. Since the Government for its part has decided to complete a series of talks by meeting the leaders of the URNG, all public institutions, including the armed forces, will comply with that determination. There appear to be good chances for a meeting to be arranged in March 1991.

21. For such a meeting to be successful, both sides should prepare the ground with caution and circumspection. In particular, armed activities should immediately be reduced, if not totally halted. One prominent interlocutor told the Expert that 80 to 85 per cent of all current human rights violations in Guatemala would cease as soon as fighting came to an end. It is difficult to understand why the guerrilla forces, despite the formal pledges made by President Serrano Elías, have in recent weeks stepped up their attacks on bridges, oil pipelines and communication centres, thereby causing heavy economic losses to the people of Guatemala. On the other hand, a deliberate effort should be made by the Government to take the first steps with a view to bringing about a noticeable demilitarization of the rural areas. In this respect, President Serrano Elías stated that the Government would refrain from any pressure designed to recruit members forcibly for self-defence patrols; such organizations could only exist and operate on a strictly voluntary basis. Similar assurances were given by the Minister of Defence, General Mendoza García. It will now be necessary to translate this new policy into concrete facts. In this connection, it may also be advisable to enact a specific law which would set forth in elaborate detail the conditions for the establishment as well as the powers of voluntary self-defence groups made up of private citizens.

C. Administration of justice

22. The Guatemalan Judicial Branch has drawn up a national plan for the reform of criminal justice, to be co-ordinated with the Executive and Legislative Branches. The first step in the new plan is to approve the new Code of Criminal Procedure, which is awaiting its third reading by the National Congress. Among the main features of the Code, we may mention the following:

It modifies the investigation procedure, which will be directed by the procurators under the supervision of the judges (watchdog judges), who have to check that human rights are respected;

It gives the victim a greater part to play in the criminal proceedings;

It requires the trial to be oral and public, with simpler and more open proceedings;

It establishes a public defence service to ensure that accused persons and poor victims are not left without counsel;

It lays down a procedure for execution of the penalty and appoints a judge to supervise the serving of prison sentences;

It modernizes the administration of justice, preventing the administrative procedures from becoming more important than the judicial case itself.

23. Secondly, the national plan includes revision of the Criminal Code, a preliminary draft of which has been drawn up by the Judicial Branch, with the aim of modifying the system of penalties and introducing appropriate instruments to combat organized crime.

24. Thirdly, the Judicial Branch has also prepared a preliminary draft of a law on the State Procurator-General's Office, treating it as an autonomous institution, whether within the Executive Branch or within the Ministerio Público. According to the preliminary draft, the Procurator-General's Office will be responsible for directing the investigation of publicly prosecutable offences, initiating criminal prosecutions before the competent courts and exercising the powers granted to procurators under the Code of Criminal Procedure. The President of the Republic will appoint the Procurator-General, selecting him from a list proposed by the Supreme Court of Justice. Under this preliminary draft, the National Police, the Treasury Police and any other security force investigating the commission of an offence are to come under the authority and supervision of the State Procurator-General. In this way security officers and forces will be assistants of the procurators, who will be able to give them instructions on the best way of conducting investigations.

25. Fourthly, the Judicial Branch considers it necessary that a law should be passed to regulate the national prison system, with the aim of humanizing prisons and preparing them to perform their constitutional function.

26. Fifthly, the Judicial Branch also envisages the establishment of a centre for judicial studies so that in future officials entering the Judiciary or the Procurator's Office will be properly trained.

27. All in all, the Judicial Branch considers that the legislative action described above should be completed within a year.

28. In addition, the Act on the Judicial Branch contained in Decree No. 64-90 was amended by Decree No. 2-89 of the Congress of the Republic, and later by Decree No. 75-90, also of the Congress, dated 19 December 1990, being finally approved by the President of the Republic on 28 December 1990. In article 2, this Act establishes the sources of the law, making particular reference to custom, although it will only prevail in the absence of any applicable law and provided that it is not contrary to morality or law and order and that it is authenticated. Article 9 confirms the principle of the supremacy of the Political Constitution of the Republic over any law or international treaty, "except treaties or conventions on human rights ratified by Guatemala, which take precedence over domestic law". Finally, in article 16 the Act contains the guarantees of due process and in article 57 the principle that "justice shall be administered in accordance with the Political Constitution of the Republic and other laws making up the country's legal system".

29. In a letter dated 8 February 1991 to the President of the Republic, the Expert referred among other things to the situation of the brother and sister Fidelino and Reginalda Ramírez Agustín. According to a report forwarded to him by the Centre for Human Rights Research, Study and Promotion (CIEPRODH), Reginalda Ramírez was abducted on 17 December 1990 by four unknown men, who took her to the military camp in the municipality of Camotán and the next day to the military zones of Chiquimula and Zacapa in turn. According to her account, at both barracks threats were made to get her to say that she was a member of the guerrilla forces. Later she was found to be in the prison of Puerto Barrios (Izábal) but it is still not known what she is accused of. As far as her brother Fidelino is concerned, the report states that he was abducted in similar circumstances, early in October 1990, and that his whereabouts are still unknown.

D. National Police

30. According to a document published by the Judicial Branch ("Analysis of the arrest procedures followed by the national police"), in 98 per cent of cases the police arrested people *in flagrante delicto*, i.e. while committing an unlawful act, or as a result of a pursuit following immediately upon the commission or attempted commission of such as act, while the remaining 2 per cent of arrests were carrried out on the basis of a court order. In point of fact, the police make arrests without going through the required constitutional procedure, altering the facts in the reports they send to the courts to justify the arrests made. In the judges' opinion, 80 per cent of these reports are so badly drafted as to prevent the judge from directing the investigation properly. In addition, only 33 per cent of police officers who are supposed to have caught people *in flagrante delicto* actually appear in court when summoned, so that the judges are obliged to release the accused if there has not been shown to be good reason for the arrest.

31. In this situation, the National Police need to be completely reorganized and police officers properly trained at a police college capable of instructing officers periodically in the constitutional procedures for arrest with due regard for the international human rights rules on the matter. The police officer should also receive professional treatment and a salary in accordance with his status and responsibilities. The Office for the Professional Responsibility of the National Police is already investigating alleged abuses committed by policemen in the exercise of their duties. Consideration is being given to issuing police officers with the United Nations Code of Conduct for Law Enforcement Officials.

32. The Director-General of the National Police also informed the Expert of his intention to strengthen his force's criminal investigation teams substantially, so as to have the necessary means to investigate properly many of the political assassinations still waiting to be cleared up. For these purposes, he expressed the hope that adequate technical assistance would be forthcoming from the international community.

E. Indigenous communities

33. In paragraph 8 of his main report, the Expert refers to the meeting he had with the Chairman of the Indigenous Communities Commission of the Congress during his visit to Guatemala in September 1990. On that occasion, the Chairman of the Commission expressed his fear that in the newly elected Congress there would be fewer indigenous deputies and that the Commission might disappear, bringing the work already undertaken, in particular the work envisaged in article 70 of the Constitution, to a standstill.

34. Fortunately, the Expert was able to note with satisfaction that the fears expressed by the then Chairman of the Commission had not been realized. During his latest visit, the Expert met members of the new Indigenous Communities Commission, who indicated their desire to carry on working on the preparation of a preliminary draft law on indigenous communities in pursuance of article 70 of the Constitution. To that end the new Commission had requested the Centre for Human Rights, through the UNDP Resident Representative in Guatemala, to continue in 1991 the technical assistance it had given in previous years, in the form of the services of an international consultant to advise the Commission on the drafting of the preliminary draft law.

F. Comunidades de población en resistencia

35. It will be remembered that in his main report (E/CN.4/1991/5, paras. 98-103), in connection with internal displaced persons, the Expert analysed the special phenomenon of the Comunidades de Población en Resistencia de la Sierra (CPR). According to a communiqué published on 8 September 1990, these communities say that they are a civilian population made up of thousands of peasants (men, women and children). In the communiqué they also explain that they were forced to leave their homes (in the departments of Huehuetenango and El Quiché) because of the fighting, particularly in 1982. They are located in the north of the municipality of Chajul (El Quiché) in the area of the villages of Xexoyeu, Santa Clara, Amachel, Cabá, Los Cimientos, Xaxboc and Paal.

36. They also asked the Government, among other things, to recognize them as a rural civilian population in resistance and to acknowledge their right to return freely to their places of origin, that the area should be demilitarized, that there should be freedom of organization among their peoples without any obligation to belong to model villages, development areas or civilian self-defence patrols and that the army should cease bombing and machine-gunning and burning crops and houses.

37. A delegation of four representatives of these communities went to Guatemala City last December to contact the Government, Guatemalan institutions, churches, intergovernmental and non-governmental organizations and embassies accredited to Guatemala with the aim of asking for a commission to be set up to visit the area. The delegation also had a meeting with tne Expert.

38. On 24 January 1991, the President of the Republic, accompanied by the Procurator for Human Rights, received the delegation. As a result of that meeting, the President decided to request the Procurator for Human Rights to visit the area where the communities were living and investigate the situation. He also asked him to submit a report containing recommendations for the most appropriate action. During his meeting with the Expert, the President informed him that he had undertaken to carry out the measures proposed by the Procurator for Human Rights.

39. In order to find out about the situation of the CPR, a visit was organized on 7 and 8 February 1991 by a delegation consisting of the Procurator for Human Rights, representatives of seven embassies (Canada, France, Italy, Spain, Sweden, Switzerland and the United Kingdom), representatives of international organizations (UNDP, UNHCR, Development Programme for Displaced Persons, Refugees and Repatriated Persons in Central America and European Economic Community) and CEAR. The Expert was also invited to join the delegation. Apart from the Expert, who was to travel to the villages direct by helicopter from Guatemala City, the members of the delegation travelled by road to Nebaj, from where they were to have taken a helicopter to the villages inhabited by the communities.

40. Because of bad weather conditions, it proved impossible to make the helicopter trips. The members of the delegation who had got as far as Nebaj stayed in the area. The Expert's helicopter could not take off, so that he had to remain in Guatemala City.

41. According to information received, the persons who had gone to Nebaj used the days they spent there to visit various places in the area. They remain convinced that it is still necessary to make every possible effort to contact the communities and provide humanitarian aid to the internal displaced persons in the region. CEAR now has an assistance centre in Xema Matze (Nebaj). The International Committee of the Red Cross, via the Guatemalan Red Cross, has also supplied some material assistance for the displaced persons. This aid, however, is not enough to cover their needs, as the Expert has already said in his report following his visit to Nebaj in September 1990.

42. The visit organized for the delegation on 7 and 8 February 1991 had the full agreement of the civil and military authorities of Guatemala.. The four representatives of the Comunidades de Población en Resistencia de la Sierra had also been informed and had given their assent. Before leaving, the delegation sent a message by radio to the people of the area in order to inform them about the visit. The members of the delegation therefore found it baffling that the representatives of the CPR should have published a communiqué in which, contrary to what had been agreed, they said that since they had not been consulted on the organization of the visit, they doubted the

impartiality of the delegation and of any report it might make. In addition, in the same communiqué, the representatives of the CPR appealed to the delegation "not to fall into the political traps laid by the President and Commander-in-Chief Serrano Elías".

43. The attitude of the representatives of the Comunidades de Población en Resistencia de la Sierra seems paradoxical at a time when the Government had given the go-ahead for these contacts to be made and when President Serrano Elías personally wished to know what situation these people were in, with the guarantee of objectivity provided by the Procurator for Human Rights and observers from international organizations and various embassies in Guatemala, all of whom were anxious to give the population humanitarian assistance.

44. The Expert also wishes to report that on 31 January 1991 other communidades de población en resistencia published a communiqué in the Guatemalan press. They were the Comunidades de Población en Resistencia del Ixcán. The communiqué is addressed firstly to the Government of Guatemala and secondly to the people of Guatemala and the Governments and peoples of the world. Like the CPR de la Sierra, the CPR del Ixcán regard themselves as a rural civilian population consisting of men, women, children and old people from different places in the department of Huehuetenango and the Ixil area who moved some 30 years ago to Ixcán because they had no work. A Catholic priest, Father Eduardo Doheny, launched a project for sharing out land in Ixcán among poor peasants, who organized themselves into co-operatives. Because of the army's repressive activities, particularly in 1982, the inhabitants had to flee to the mountains, where they still remain, suffering, according to the communiqué, from many kinds of deprivation and from the army's repression.

45. Among the demands that the CPR del Ixcán made to the Government in the communiqué, was that they should be recognized as a civilian population. They also ask that there should be an end to the bombing and the burning of their crops and houses, that their lives should be respected, that they should have freedom of movement and that human rights commissions, international organizations and church delegations should be authorized to enter the places where they live, so as to bear witness to the situation and conditions they are living in.

46. The Expert also wishes to inform the Commission on Human Rights that during his recent visit to Guatemala he received reports of alleged violations of human rights. Two cases seemed to him to deserve special attention, and he therefore brought them to the notice of the President of the Republic, so that they could be investigated. The case of Maria Tíu Tojín and her daughter aged only a few months is described below since it is related to the problem of internal displaced persons (the other case is described in chapter I.C. above).

47. Mrs. Tíu Tojín and her daughter have been missing since September 1990. Maria Tíu Tojín, aged 25, and her daughter, who at the time was one month old, were moved by the army, against her will, together with a group of 89 peasants, from Santa Clara to Amachel on 29 August 1990. From there, on 7 September 1990, the soldiers took them by helicopter to the military camp at Nebaj. Most of the members of the group were later taken to the CEAR centre in Xema Matze, but Maria Tíu Tojín and her daughter never got there. This

information was given to the Expert personally by her sister. The Expert is particularly concerned at the disappearance of these two persons, having visited the CEAR centre at Xema Matze in September 1990, precisely when the group of 89 persons had just been moved from the military camp at Nebaj to the centre.

G. Santiago Atitlán

48. The tragic events which occurred in Santiago Atitlán during the night of 1 to 2 December 1990 are described in the main report of the Expert (E/CN.4/1991/5, paras. 46 and 47). This account is based mainly on the report which the Procurator for Human Rights established after his visit to Santiago Atitlán. In order to be able to assess the situation personally, the Expert also travelled there during his recent stay in Guatemala. He was received by the mayor and councillors of the town, by the president and members of a recently formed civic group on security and development and other citizens of the town. Many of the persons who had been wounded when the military fired on them, were also present. Some of them are still in a critical state of health and may never fully recover, remaining handicapped for the rest of their lives. The Expert also paid a visit to the local police station, where he met the newly-appointed chief and the three other police officers. Finally, he visited the place where the destacamento militar (military camp) had existed until, complying with the wishes of the population, the Government withdrew it in late December 1990.

49. The version of the events given by the Procurator for Human Rights was confirmed by all witnesses the Expert was able to interview. Deeply shocked by the failed attempt to assault and rob one of their fellow citizens, the inhabitants of Santiago Atitlán organized a peaceful demonstration in front of the military camp. Some of them had sticks, but they did not carry any fire-arms. The newly-elected mayor tried to explain that he wished to speak to the commander of the military camp. Without any warning, however, the soldiers opened fire on the crowd. The death toll is now established at 13 persons; seventeen persons were wounded. As far as is known, none of the soldiers suffered injuries.

50. Judicial proceedings to try those responsible for the crimes have been started. Since charges are being brought against members of the armed forces, the proceedings are placed under the jurisdiction of the military courts. Although the Procurator for Human Rights has identified three persons as bearing the primary responsibility, namely José Antonio Ortiz Rodríguez, the commander of the military camp, and sub-lieutenants Juan Manuel Herrera Chacón and Sergio Julio Maaz Ochoa, to date only two persons have been indicted. These are José Antonio Ortíz Rodríguez and Sergeant-Major Efraín García González, the latter being the only person under detention. It emerges from a decision of the Court of Appeal of Quetzaltenango of 19 December 1990 that the military prosecutor entrusted with the case, Sara María Vides Figueroa, was given a fine of 25 quetzales for lack of orderly handling of the proceedings. Since the code of military criminal procedure establishes fairly short deadlines, it is to be expected that the trial stage may be concluded during the first half of 1991. Unfortunately, however, the law in force does not provide for a public trial and oral hearing. The public at large is thus excluded from the proceedings and will not be able to assess whether the eventual judgement is well-founded.

51. The Expert was informed by the wounded persons that the public authorities had not provided any assistance to them. Medical treatment was taken care of by a non-governmental organization, Médecins sans frontières. But the victims themselves have to defray the cost of travelling either to the hospital of Sololá or to hospitals in Guatemala City. They have not received any compensation for the loss of income they have suffered. The same holds true of the families of those who died as a result of the shooting.

52. After the disbanding of the military camp, the citizens of Santiago Atitlán established a voluntary self-defence organization. In each of the five districts of Santiago Atitlán, every night, so-called "rondas", made up of 17 citizens armed with sticks, patrol the streets. To date, only two incidents have occurred, each of them with the police. At the beginning of January 1991, the Procurator for Human Rights had to intervene personally to liberate several police officers whom the population had besieged in the police station after they had arrived in the middle of the night. Then, on 27 January 1991, a police officer, again at night, shot a villager apparently without any reason, wounding him slightly in the chest. Apart from these two incidents, however, no criminal acts have occurred in or around Santiago Atitlán since the removal of the military camp. Farmers are able to work in the fields even far outside the town without any fear. The Expert heard unanimous assurances that there were no guerrilla units operating anywhere around Santiago Atitlán.

53. The Government seems to have the intention of increasing the strength of the local police force from five to 20 members. A corresponding number of beds have already been installed in the police station. Many factors would seem to militate in favour of reconsidering this decision. First of all, the lack of space as well as the absence of adequate hygienic facilities make the police station unfit for such a large number of people. Secondly, the citizens of Santiago Atitlán, rightly or wrongly, view the strengthening of the local police force as a substitute for the withdrawal of the unit stationed in the military camp. They feel offended by the lack of confidence in them thus manifested by the public authorities, even requesting that the police station be totally closed down. The Expert pointed out that the Government could not renounce its overall responsibility for public order and security and stressed that a deliberate effort at mutual confidence-building was necessary. In fact, at his invitation, the mayor and other leading figures of Santiago Atitlán were present at his meeting with the chief of the police station and established first contacts with this officer.

54. The mayor and the municipal councillors unanimously expressed the wish that a "juez de paz" be created for Santiago Atitlán and that his office be located there. They also pointed out that a substantial improvement of the existing communication services was necessary.

55. Before the Expert left Santiago Atitlán, two petitions in writing were submitted to him. The mayor, supported by a number of his municipal councillors, requested him to deploy his best efforts with a view to achieving the following:

(a) The creation of a service for the supply of drinking water, which until now has had to be taken from the lake;

(b) The supply of a truck for the establishment of a regular rubbish disposal service;

(c) The improvement of roads connecting Santiago Atitlán with the neighbouring towns;

(d) The construction of a municipal market.

In the other petition, signed by members of the teaching staff of the school of the district of Panul, help was sought for the improvement of the bad material conditions under which that school at present operates. The Expert was also informed that only a very low percentage of the children of Santiago Atitlán received education in the public schools.

II. CONCLUSIONS AND RECOMMENDATIONS

56. The Expert wishes to stress that the present conclusions and recommendations should be read in conjunction with the conclusions and recommendations already contained in the main report.

The new Government

57. It is to be welcomed that the new Government of President Serrano Elías, which was chosen through a legitimate democratic process, could take office as provided for by the Constitution on 14 January 1991 after the expiry of the mandate of President Cerezo Arévalo.

58. It should also be noted with satisfaction that the Government of President Serrano Elías has made human rights a central element of its overall political strategy for the coming five years. The Government's resolve to see to it that the law be applied to all without any discrimination in every field, including penal law, deserves unconditional support.

59. In order to strengthen the attention given to human rights issues in all sectors of governmental policies, the Government should consider the desirability of establishing a human rights unit within the framework of the Office of the President, entrusted with his special authority. The task of that unit should be one of co-ordination. It should not interfere with the specific functions of the courts or of the Procurator for Human Rights.

National dialogue

60. Every effort should be made to ensure that the prospect of carrying the national dialogue one step further through the participation of the Government itself may soon materialize. Even before reaching a formal agreement on a cease-fire, the Government and the URNG should desist from any activities which might jeopardize the chances for a peaceful solution of the conflict.

Reform of the judicial system

61. With a view to making the judicial system more effective in punishing all types of crimes, including ordinary crimes with a political motivation, and doing away with the lamentable fact of impunity, the National Congress should, as soon as possible, enact the draft code of criminal procedure, whose consideration was not completed by the previous assembly. Likewise, a reform of the institution of the Procurador General de la Nación (Attorney-General of the Nation), by setting apart the Fiscal General (Procurator General), would contribute to strengthening criminal law.

Other legislative reforms

62. Given the legal uncertainties surrounding the existing Comités voluntarios de defensa civil, it would appear advisable to enact a law which sets forth in specific detail the conditions for the establishment, and the powers of, self-defence groups made up of private citizens. Furthermore, under the principles of equality and non-discrimination, it seems imperative to regulate the substantive as well as procedural requirements under which young men may be drafted for military service.

The restructuring of the National Police

63. The Government's intention to restructure the National Police is to be noted with satisfaction. The National Police should become totally independent of the armed forces. All efforts, including requests for foreign assistance, should be undertaken to increase its power of investigation as well as its general level of professional capability. Effective control mechanisms should be used more fully or established, as appropriate, to ensure that police officers always act in strict conformity with the law. In no case should officers in civilian clothes be allowed to arrest persons in a way that leaves doubts as to whether a lawful act or an unlawful abduction was carried out.

The Comunidades de Población en Resistencia

64. The necessity of providing humanitarian assistance to the so-called Comunidades de Población en Resistencia still exists at the present time. The fact that President Serrano Elías has entrusted the Procurator for Human Rights with establishing a report on the living conditions of those people is a hopeful sign, which would seem to point to a normalization of the situation in the near future.

The aftermath of the tragic events at Santiago Atitlán

65. Justice requires that all of those who are responsible for the crimes committed in Santiago Atitlán be brought to a speedy trial. Immediate redress, including financial compensation, must be accorded to the victims and their families. In order to win the confidence of the inhabitants of the town, the Government should proceed with the utmost circumspection. It should avoid the erroneous impression that, by increasing the number of police officers, it is attempting to place the population under tight police supervision. The wishes of the local government for an improvement of municipal services deserve proper consideration.